

Docket No. 05-1383
Issued: October 17, 2005

alleged that she had left hand pain. Appellant did not stop work. She was treated at the emergency room and the bill was paid by the employing establishment considering it first aid treatment.

A second CA-1 was filed on May 26, 1999 which was accepted for back strain. This was handled by the Office under a different claim number (01-03365374).

In an attending physician's report dated June 7, 1999, Dr. Mervyn L. Rimai, an attending physician, treated appellant for both the April 24 and May 26, 1999 injuries. He diagnosed right sympathetic pain and right lumbar pain which he checked "yes" as caused or aggravated by her employment. Dr. Rimai concluded that appellant was totally disabled for the period June 4 to 24, 1999, stating: "because the sedentary work she was assigned aggravated problems of her left arm from a previous injury of April 24, 1999."

In a report dated June 18, 1999, Dr. Michael Aron, a treating Board-certified orthopedic surgeon, reported tenderness over the medial and lateral epicondyles and a positive shoulder impingement test. With regard to history, he reported that appellant "has been having problems with the left upper extremity since April 14, 1999." He further noted that "she may in fact be suffering from carpal tunnel syndrome ... but this does not explain all her symptoms." Dr. Aron ordered an electromyogram (EMG).

By report of July 7, 1999, Dr. Aron noted that appellant reported a painful arm after working on machines, but released her to light duty. On August 9, 1999 the Office accepted appellant's claim for aggravation of left carpal tunnel syndrome.

A July 14, 1999 report of Dr. Aron was received by the Office on August 10, 1999. He reviewed the results of the EMG and concluded that there was no evidence of carpal tunnel syndrome. Dr. Aron's report noted that appellant continued to complain of generalized discomfort mainly about the elbow, forearm and wrist. He found her complaints to be muscular in origin and referred her to physical therapy. An August 6, 1999 follow-up report noted that there were no specific findings and appellant was returned to full duty.

On June 6, 2000 appellant filed a claim for a recurrence of disability beginning May 18, 2000, claiming her condition never improved subsequent to her accepted April 24, 1999 employment injury. The Office sent a development letter to appellant on July 18, 2000 to which she responded with a description of her duties and argued that her shoulder condition was related to the original injury. Appellant noted that the carpal tunnel syndrome was a misdiagnosis. She underwent rotator cuff surgery on June 15, 2000.

By merit decision dated September 11, 2000, the Office denied appellant's claim for a recurrence of disability finding that the medical evidence did not support a causal relationship between her shoulder condition and the accepted condition of aggravation of carpal tunnel syndrome.

On September 11, 2001 appellant requested reconsideration and provided copies of medical reports which were already of record. Appellant argued that, although the carpal tunnel syndrome was a misdiagnosis, the Office was under an obligation to further develop the claim and accepted an aggravation of rotator cuff syndrome rather than carpal tunnel syndrome.

By decision dated December 5, 2001, the Office denied the reconsideration request. The Office found there to be no new medical evidence supporting appellant's argument to expand the claim to include the rotator cuff syndrome. As there was only argument and no medical evidence in the record to support any causal connection between the original injury and the shoulder condition, the request for reconsideration was denied without a review of the merits of the claim.

Thereafter, appellant forwarded a copy of a September 11, 2001 medical report from Dr. John J. Mara, an attending Board-certified orthopedic surgeon, who stated:

"I am responding to your letter of September 4, [2004] regarding [appellant]. I believe that you have all the patient's records in your file and, therefore, can refer to these as well. [She] was first seen by me on March 7, 2000. The history was that she had injured her shoulder while using a flat sorter at work. Treatment was as noted in the chart and did include surgery. The diagnosis was an impingement syndrome of the shoulder. The patient had no preexisting injuries that would have impacted on the present diagnosis. The prognosis is good.

"In my best medical opinion, the [appellant's] injuries are directly related to her work at the [employing establishment]."

Appellant claimed that the report had been submitted to the Office prior to the December 5, 2001 decision but since it was not mentioned in the decision she believed it may have been overlooked. By letter dated January 4, 2002, her counsel requested reconsideration and expansion of appellant's claim to include left shoulder impingement syndrome.

By decision dated February 21, 2002, the Office denied appellant's request for reconsideration on the grounds that the request was untimely filed and failed to establish clear evidence of error.² The Office found that the new medical evidence did not raise a substantial question concerning the correctness of the Office's prior merit decision and was insufficient to establish clear evidence of error.

On March 27, 2002 the Office issued a notice proposing to rescind acceptance of aggravation of left carpal tunnel syndrome on the grounds that evidence received by the Office subsequent to the original acceptance verified that appellant never had carpal tunnel syndrome.

In response, by letter dated April 26, 2002, appellant contended that her injury had been misdiagnosed and agreed that the evidence did not establish aggravation of left carpal tunnel syndrome as the EMG was negative. She insisted, however, that the Office should have accepted her claim for an aggravation of a rotator cuff syndrome or further develop the claim.

By decision dated June 13, 2002, the Office finalized rescission of acceptance of aggravation of left carpal tunnel syndrome.

² By letter dated February 22, 2002, appellant's counsel filed an appeal with the Board of the Office's decision but later withdrew that appeal on December 2, 2002 in favor of further review by the Office.

In a letter dated July 2, 2002, appellant requested an oral hearing before an Office hearing representative which was held on November 21, 2002.

By decision dated March 12, 2003, the Office hearing representative affirmed the June 13, 2002 rescission of appellant's claim for aggravation of carpal tunnel syndrome, denied the request to expand the claim to include a left shoulder condition, but remanded the case for acceptance of a left wrist sprain resulting from the April 24, 1999 employment injury.

In a March 12, 2004 letter, appellant's counsel requested reconsideration on the denial of the Office to expand her claim to include a shoulder injury.

In a decision dated June 10, 2004, the Office denied modification of the March 12, 2003 letter by affirming the Office's refusal to expand the claim to include a left shoulder condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

ANALYSIS

In the instant case, it is not disputed that appellant was a federal employee. However, she has not submitted sufficient medical evidence to establish a *prima facie* case that her diagnosed condition of left shoulder impingement syndrome was caused by the April 24, 1999 incident.

The Board has carefully reviewed the record and finds that there is no medical report of record which addresses with sufficient medical rationale how appellant's left shoulder condition was caused by employment factors on April 24, 1999. The June 18, 1999 report of Dr. Aron two

³ 5 U.S.C. §§ 8101-8193.

⁴ Gary J. Watling, 52 ECAB 278 (2001); Victor J. Woodhams, 41 ECAB 345 (1989).

⁵ Thomas L. Agee, 56 ECAB ____ (Docket No. 05-335, issued April 19, 2005).

months after the original injury, although somewhat supportive of shoulder involvement at that time, does not address the crucial issue of causal relationship between any shoulder condition and the April 14, 1999 incident. Moreover, he concluded that she may in fact have been experiencing carpal tunnel syndrome. In June 1999, Dr. Rimai involved the arm when he opined that appellant's documented injury was caused "because the sedentary work she was assigned aggravated problems of her left arm from a previous injury of April 24, 1999." However, he ultimately diagnosed a sprained wrist, which was later accepted by the Office. Dr. Rimai did not diagnose any shoulder condition. His opinion is insufficient to establish that appellant's left shoulder condition was causally related to the April 24, 1999 incident. The report of Dr. Mara is the only one which actually discusses a causal connection between her shoulder condition and her employment. However, this report is a year after the original injury and is not based on accurate facts. The record does not reflect that appellant injured her 'shoulder' on April 24, 1999. On the contrary, the record supports that she injured her wrist on that date. It is well established that medical reports must be in the form of a reasoned opinion by a qualified physician and must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value⁶. Accordingly, the Board finds that the Office properly denied appellant's request to expand the claim to include a left shoulder condition. Although the Office generally shares responsibility in the development of the evidence,⁷ it is first appellant's responsibility to put forth a *prima facie* case, which has not been established by the medical evidence of record.⁸

CONCLUSION

The Board finds that the Office properly denied appellant's request to expand her April 24, 1999 claim to include her left shoulder condition.

⁶ *William D. Farrior*, 54 ECAB ____ (Docket No. 02-2139, issued May 13, 2003); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

⁷ *John J. Carlone* 41 ECAB 354 (1989), *Horace Langhorne*, 29 ECAB 820 (1978).

⁸ *See Richard A. Weiss*, 47 ECAB 182 (1995).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2004 is affirmed.

Issued: October 17, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board